



RURAL BROADBAND COMPANY, INC.

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January 12, 2015

Before the Federal Communications Commission

Washington, D.C. 20554

In the Matter of)

)

Promoting Innovation and Competition in the)

MB Docket No. 14-261

Provision of Multichannel Video Programming)

Distribution Services)

NOTICE OF PROPOSED RULEMAKING

Adopted: December 17, 2014

Released: December 19, 2014

**Comments of Rural Broadband Company, Inc.,
pursuant to the NOTICE OF RULEMAKING In the Matter of Promoting Innovation
and Competition in the Provision of Multichannel Video Programming Distribution
Services**

To: Honorable Thomas E. Wheeler, Chairman
Federal Communications Commission
via electronic filing to: <http://fjallfoss.fcc.gov/ecfs2/>

From: Tony Ramos, President, Rural Broadband Company, Inc. (RBC)

With contributions from :

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Harriet (Hattie) W. Grifo, Director, Cragmoor Free Library / Board Member: RBC

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I.

INTRODUCTION

A .

Rural Broadband Company, Inc. - Company Statement

Rural Broadband Company, Inc. (RBC), is an independent company that provides professional services relative to funding for the expansion of the most modern, high quality and capacity voice/data/graphics/video communications carrier-neutral infrastructure in rural America.

RBC's professional services include project origination, organization, development, funding and fulfillment of large-scale digital data rural infrastructure projects.

In addition, RBC seeks to achieve funding for large- scale consumer-friendly white

space technology expansion into rural areas, so as to achieve digital data parity with urban/suburban areas of America.

The Board of RBC has authorized its president, Tony Ramos, to file these Comments.

B . Company Philanthropy.

In addition to a concentration on issues of rural infrastructure, RBC seeks to greatly expand user adoption rates for all types of PDA gadgets in rural America. To this end, RBC has created the ‘Lend-A-Gadget’ program.



The Lend-A-Gadget program allows for the donation of tablets, IT support, and promotional materials, to libraries, so that libraries may check out a tablet to a patron, like checking out a book.

RBC’s invention of the Lend-A-Gadget program allows for its own organization and creation of specific programs for libraries. In addition, and since its creation, technology

companies have now created kits that follow the Lend-A-Gadget blueprint, thus, and also, providing for a turnkey solution for both hardware, software and IT consulting, a win-win for user adoption rates.

II.

COMMENT ISSUE

The Chairman has invited Comment on MB Docket No. 14-261 on the topic of “possible interpretations of the term MVPD as used in the Communications Act... and seek(s) comment on how each of those interpretations would affect industry and consumers. In Section III. A. we seek comment on two possible interpretations:

We propose to interpret the term MVPD to mean distributors of multiple linear video programming streams, including Internet-based services.

We tentatively conclude that this interpretation is a reasonable interpretation of the Act, and is most consistent with consumer expectations and conditions in the industry.

We also seek comment on an alternative interpretation that would require a programming distributor to have control over a transmission path to qualify as an MVPD.

We invite comment on whether this interpretation is consistent with the Act and Congressional intent and how this interpretation would apply offer (sic) (to other) subscription linear video services over the Internet.”¹ Parenthesis supplied.

For the reasons set forth below, we adopt the interpretation in the Notice, and reject the alternative interpretation in the Notice.

III.

COMMENT SUBJECT AREAS

A.

COMMENT ON CURRENT FCC REGULATORY JURISDICTION

Any Comments on an interpretation of the definition of MVPD must proceed from the FCC’s own jurisdiction over the subject matter.

To this end, and in addition to the extensive citations to FCC and other agency statutes and rules governing jurisdiction, there must be added the FCC’s own addition of its jurisdiction over the new technology infrastructure opportunity of white space technology.

¹ Notice, pp. 3-4

In addition, and when considering that, at the same time, the FCC has identified 84,000 census blocks as being unserved as a part of its Rural Broadband Experiment bid process, any comments on MVPD must also be conformed to this issue.

I . The FCC & white space technology

The FCC created the white space technology opportunity, in its current form, in 2012² At the same time, and as a necessary technology implementer, the FCC also adopted database administration rules.³

Since that time, companies like RBC have been rushing to fulfill the mission, as clearly stated by the Chairman, of finding ways to expand digital data infrastructure into rural America.

Thus, and in addition to the opportunities that are outlined in the Notice, there must be added the vast opportunities of making sure that the commercialization of white space technology can progress in such a manner that is consistent with the twin goals of competition and the promotion of consumer access to infrastructure.

Thus, the FCC, and rightly so, made no rules, because it is not yet known what such infrastructure will look like, in limitation of the commercialization of white space technology.⁴

² See, Commission Document, TV White Space Rule Changes, April 5, 2012, FCC 12-36, footnote 2 for the previous procedural history leading up to this document.

³ See, Commission Document, TV White Space Database Administrator Rules, March 1, 2013, DA 13-324, ET Docket No. 04-186

⁴ See, RBC's Comments on the FCC's TENTH BROADBAND PROGRESS NOTICE OF INQUIRY: <https://drive.google.com/a/urbroadband.com/?tab=wo#folders/0BxfFvX3PZFjzWXFIVUImODIxcEE>

Leaving for another day any such rule as to signal, any rule that concerns purely infrastructure appears beyond and FCC jurisdiction, or in fact, interest in the Notice. One likely reason for such is that, likely, white space technology, from a purely infrastructure viewpoint, will look a lot like pure infrastructure components in sectors like cellular tower companies, and also like fiber companies. In both instances, referring to those companies that are not affiliated with any companies that provide any signal, and provide no subscription services that would pull them into the MVPD sphere.

2 . The FCC's Rural Broadband Experiment

On January 30, 2014, the FCC created the Rural Broadband Experiment program.⁵ At that time, on March 7, 2014, RBC was invited, together with other companies, to respond with an omnibus Expression of Interest letter, with the New York State Broadband Program Office.⁶

After the comment period, the FCC created a new program, utilizing a bid format, as opposed to a grants format, and made available its first round of funding for the program.⁷

As ultimately and currently framed, the program identifies 84,000 census blocks that the

⁵ See, Re: Expression of Interest – Rural Broadband Trials Connect America Fund, WC Docket No. 1090

⁶ See, <https://drive.google.com/a/urbroadband.com/?tab=wo#folders/0BxfVx3PZFjzQ0IKV0xUd2psNFE>

⁷ See, *WIRELINE COMPETITION BUREAU ANNOUNCES APPLICATION PROCESS FOR*

ENTITIES INTERESTED IN PARTICIPATING IN THE RURAL BROADBAND EXPERIMENTS, August 19, 2014, DA 14-1203

FCC has certified in rural areas as ‘unserved.’ Further, the program and the bidding process expands the types of companies that qualify to bid, removing any restrictions on companies that are or may be MVPDs.

In fact, the definitions specifically provide for, and request that ‘any’ companies that have a plan for rural broadband infrastructure should participate. The Chairman’s public comments to media are consistent with this language.

B .
COMMENT ON COMPETITION POLICY

The Notice contains extensive language on competition policy and rulemaking. The FCC’s Rural Broadband Experiment rules provide for even greater and more forceful and necessary language. Such policy statements and rules directives will serve to protect market entry in what is now a three-prong new FCC plan for rural America: white space technology, the Rural Broadband Experiment, and now a coming new interpretation of the definition of MVPD.

The twin enforcement jurisprudential mechanisms of the Department of Justice and the Federal Trade Commission deter unfair competition and provide for its promotion.

RBC, therefore, believes that, as to this new plan, the FCC should consider this Comment as it applies to rural areas:

“There are many different factors which make rural digital data, known anecdotally and in general as ‘broadband’ infrastructure, in America a unique challenge. Among the primary reasons for the dramatic disparity between urban/suburban and rural broadband infrastructure is the absence of a market economy that has its own definition. As a result, the broadband infrastructure industry sector has had to make market decisions based upon a model that is geared towards urban/suburban areas, where components like density of customer base and abundance of infrastructure assets can competitively shape price and therefore, profits. Such a market definition clearly has not worked for rural America, where customer density base and infrastructure assets are greatly diminished.

By defining a rural market, and therefore creating, within such definition, the actual market, an expansion of infrastructure assets will flourish. By so defining the market, stakeholders may have better data within which to operate. With such data, within such a defined market, market forces of price, competition and cost can provide an efficiency that will allow for the expansion of infrastructure at a price/profit point that will create the incentives currently lacking for such expansion.”

C.

COMMENTS ON MARKET DEFINITION AND INCUMBENTS

RBC pauses here to comment, further on market definition as it may or may not affect incumbents.

Such comments are made necessary because some of the language in the Notice, as well as in the Chairman's Statement, may lead to a reactionary backlash that would prejudice what is a very delicate and complex task of expanding digital data infrastructure in rural America.

In and among those 84,000 census blocks shown in the FCC's Rural Broadband Experiment, there simply is no market. RBC's opinion is that the filters that were utilized by the FCC to accumulate the 84,000 may be among the most stringent. In this regard, RBC believes that the actual unserved rural market is vastly more expansive. Further, there is no firm economic data provided as to how such a broadband experiment would flourish in a market economy. RBC believes that the local/regional approach of the existing business models of incumbent providers, must, therefore, give way to the creation of a national market for rural infrastructure expansion.

In defense of the Notice, there is language contained therein that anticipates that multiple components of infrastructure, cable, towers and the like, may make up an

MVPD's delivery system.

All this being said, the FCC does not wish to take away any incentives that are currently being created with white space technology for its commercialization into the unserved areas. To take away, as by making overly prejudicial statements concerning companies that are either incumbents, or that provide subscription services, both coming within the definition of MVPD, would be to challenge the market need of those companies to go beyond their current demarcation point. By stopping the demarcation point, and with no incentives for new customers, the 84,000 census block broadband wasteland will turn into the badlands of broadband.

Nobody wants that result.

Thus, when considering new market companies that are trying to solve the infrastructure problem, with hybrid systems that will make available the opportunities for MVPDs to expand their offerings, the FCC must keep in mind that a disincentive at the demarcation point of already existing service providers is an incentive to create the badlands of rural broadband.

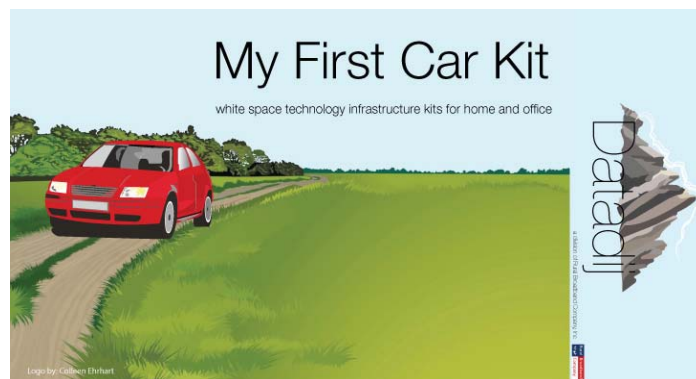
Such Comments by RBC leave for another day the question, already alluded to in the FCC's preemption rules for Eligible Telecommunications Entities (ETC), as to whether, since the area is certified as 'unserved' any incumbent is actually an 'incumbent' in such

areas.

The delivery of a white space technology end user solution, therefore, and for the foreseeable future, is partially dependent on the existence of current traditional infrastructure assets.

The FCC has left to entrepreneurial companies, like RBC, the task of figuring out how to get the technology into the mass consumer stream.

In this regard, RBC has already invented two 'kits,' as a result of two years of organizing work on the delivery of such systems.



The 'My First Car Kit,' invented by RBC, is the first-ever kit that is designed for mass marketing directly to the consumer. In order to arrive at a turnkey system that can solve all of the complex technology issues of making white space technology work, the kits have had to have included, among other items, two point-to-point radios and all of the

peripherals, plus a router, plus a tablet. Any break in that chain, so far, would lead to a failed system. Thus, this kit is for the smallest capacity white space technology radio, so as to achieve any sort of price point, and even at the level, the kits are expensive.



The 'My Monster Truck Kit,' was also invented by RBC. The kit contains a vastly more powerful 'base station' radio that can be used by many of the smaller capacity radios that make up the 'My First Car Kit' system. This kit was invented in order to provide a more customized opportunity, to allow, for example, rural communities that may wish to become involved in 'public/private' opportunities, to furnish this radio and the peripherals on the one end. On the other end, the consumer would purchase, essentially, one half of the 'My First Car Kit,' at a cost savings, as a further incentive.

A third, middle range 'My Long Hauler Kit' is under development.

Extensive negotiations with finance companies, like PayPal's 'Bill Me Later' have been

undertaken, the ‘My First Car Kit’ opportunity is now an eCommerce opportunity on Amazon, and RBC is currently exploring, with other companies, any leasing opportunities that may exist.

Datadij is a division of RBC. The division is responsible for white space technology infrastructure projects. RBC’s white space technology projects, through data Datadij, consistent with its agreements with its partners, is required to market and sell its white space technology projects as kits.

With the kits, RBC’s goal is to place into the hands of the consumer, every opportunity to push digital data infrastructure into rural America. Such is consistent with FCC policy pronouncements and actions.

D .

COMMENTS ON THE FCC’S PROPOSED INTERPRETATION OF MVPD

“The Act defines an MVPD as:

[A] person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or

customers, multiple channels of video programming.”⁸

Thus, RBC believes that any new rule must make clear that any further definition specifically excludes ‘any companies that provide, either individually or in combination with their respective sectors, like cellular tower, fiber, white space technologies, or any other companies that act to organize such infrastructure so as to expand digital data infrastructure, and that do not provide any program or any subscription services.”

E .

COMMENTS TO CLARIFY THE FCC’S DEFINITIONS OF INFRASTRUCTURE AS CONTAINED IN THE NOTICE

RBC comments here to clarify and to request a clear definition of the word ‘infrastructure.’

Such clarification is needed because, throughout the Notice, particularly in its citations to statutes and rules, the FCC continues to face the twin hazards of acting beyond its jurisdiction, and of making an all-inclusive, but factually incorrect interpretation of the MVPD rule.

For example, the Notice provides that cable operators, with a transition to MVPD, could

⁸ Notice, p. 4

“...untether their video offerings from their current infrastructure,...”⁹

In quoting previous comments from DIRECTV, the Notice indicates ‘ “Non-traditional MVPDs have gone from mere curiosities to emerging competitors in a very short period of time, and continue to develop rapidly as the speed and ubiquity of broadband infrastructure improves.” ’¹⁰

With respect to cable television distribution services, the Notice provides ‘ “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound and video using wired telecommunications networks.” ’¹¹

This same definition is applied to the Direct Broadcast Satellite Service sector.¹²

And, to the Open Video Systems sector.¹³

Throughout, therefore, there remains a lack of a clear definition of the term ‘infrastructure,’ because all of those sectors provide subscription services content. There are entire systems, however, that are wrapped in the ‘infrastructure’ term. When considering MVPD is not a physical infrastructure sector, but rather Internet-based,

⁹ Notice, p. 3

¹⁰ Notice, footnote 105

¹¹ Notice, p. 42 and footnote 20

¹² Notice, footnote 43

¹³ Notice, footnote 59

there is a real hazard in saying, for example, ‘yes, we operate in an MVPD infrastructure environment,’ because what does that mean?

The Notice itself speaks to the hazard of anecdote, in challenging commentators to dispute what the FCC has decided it would like to make as the new interpretation, saying specifically, “(w)e also seek comment on an alternative interpretation that would require a programming distributor to have control over a transmission path to qualify as an MVPD.”¹⁴

There can be no such interpretation because, like the cellular tower sector, the independent fiber sector, and now the white space technology sector, together with the independent companies in a new market definition sector, tasked with very large-scale expansion of rural digital data, a repeat of the past business plan of the cable industry, saddling it with the infrastructure build, would permanently prejudice any chance of providing the complex mix of business incentives that would allow for the expansion into rural America. By requiring any infrastructure company to become an MVPD, as has already happened with the cable sector, shareholder interest will make the demarcation point at the end of the market definition of the cable provider incumbent area. Such companies simply are not in the business of, and cannot afford the risk capital needed for such expansion.

¹⁴ See, footnote 1, above.

F.

COMMENTS ON A CLARIFYING DEFINITION BY CONGRESS

To the extent that, as has been noted throughout the Notice, the United States is in a vastly more expansive Internet phase, RBC has called for a National Digital Data Physical Infrastructure Act (The DIGEDAY Act).

Throughout the history of our great Nation, new technology issues have, in fact, migrated to the Congress after a certain point. Within the time frame as discussed in the Notice, after similar periods, Congress has acted.

With the 114th Congress having now convened, RBC has introduced the Act to the Congress, with its own registration of itself to seek such legislation.¹⁵

IV.

CONCLUSION

The Chairman has invited Comment on MB Docket No. 14-261 on the topic of an updated interpretation of the rule on MVPD.

The Board of RBC thanks the Chairman and the Commission for the opportunity of

¹⁵ See, RBC's registration of itself to lobby Congress:<https://drive.google.com/file/d/0BxfFvX3PZFjza3FteGx0Y29ybIE/view?usp=sharing>

presenting these comments.

Subject to the Comments made herein, and with requesting specific language for any new, updated rule, RBC agrees with the FCC's proposed interpretation, and specifically disagrees with the alternative interpretation, both of which are presented in this Notice.

V.

REQUEST FOR NOTIFICATION OF PARTICIPATION AT HEARINGS

RBC requests notification of any hearings, and further requests time to present its Comments in said hearings.

Respectfully submitted,

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